

SENATE BILL 3618  
By Southerland

AN ACT to amend Tennessee Code Annotated, Title 66,  
relative to the New Home Warranty Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 66, is amended by adding the following sections as a new chapter thereto.

SECTION 2. This chapter shall be known and may be cited as the "New Home Warranty Act".

SECTION 3. The general assembly finds a need to promote commerce in the state by providing clear, concise, and mandatory warranties for the purchasers and occupants of new homes in the state and by providing for the use of homeowners' insurance as additional protection for the public against defects in the construction of new homes. This need can be met by providing a warranty for a new home purchaser defining the responsibility of the builder to that purchaser and subsequent purchasers during the warranty periods provided herein. Additionally, all provisions of this chapter shall apply to any defect although there is no building standard directly regulating the defective workmanship or materials.

SECTION 4. For purposes of this chapter:

(1) "Builder" means any person, corporation, partnership, limited liability company, joint venture, or other entity which constructs a home, or addition thereto, including a home occupied initially by its builder as the builder's residence. A person, corporation, partnership, limited liability company, joint venture, or other entity which constructs a home, or any addition thereto, is a "builder", whether or not the consumer purchased the underlying real estate with the home;

(2) "Building standards" means the standards contained in the building code, mechanical-plumbing code, and electrical code in effect in the municipality or other local political subdivision where a home is to be located, at the time construction of that home is commenced, applicable state law, and any additional performance standards, if any, which the builder may undertake to be in compliance;

(3) "Home" means any new structure designed and used only for residential use, together with all attached and unattached structures, constructed by the builder whether or not the land was purchased from the builder. "Home" also means structures containing multiple family dwellings or residences;

(4) "Initial purchaser" means any person for whom a home is built or the first person to whom a home is sold upon completion of construction;

(5) "Major structural defect" means any actual physical damage to the following designated load-bearing portions of a home caused by failure of the load-bearing portions which affects their load-bearing functions to the extent the home becomes unsafe, unsanitary, or is otherwise unlivable:

(A) Foundation systems and footings;

(B) Beams;

(C) Girders;

(D) Lintels;

(E) Columns;

(F) Walls and partitions;

(G) Floor systems; and

(H) Roof framing systems;

(6) "Owner" means the initial purchaser of a home and any of his successors in title, heirs, invitees, or assigns to a home during the time the warranties provided under this chapter are in effect; and

(7) "Warranty commencement date" means the date that legal title to a home is conveyed to its initial purchaser or the date the home is first occupied, whichever occurs first.

#### SECTION 5.

(a) Subject to the exclusions provided in subsection (b) of this section, every builder warrants that one (1) year following the warranty commencement date:

(1) The home will be free from any defect due to noncompliance with the building standards or due to other defects in materials or workmanship not regulated by building standards;

(2) The plumbing, electrical, heating, cooling, and ventilating systems exclusive of any appliance, fixture, and equipment will be free from any defect due to noncompliance with the building standards or due to other defects in materials or workmanship not regulated by building standards; and

(3) The home will be free from major structural defects due to noncompliance with the building standards or due to other defects in materials or workmanship not regulated by building standards.

(b) Unless the parties otherwise agree in writing, the builder's warranty shall exclude the following items:

(1) Fences, landscaping, including, but not limited to, sodding, seeding, shrubs, existing and new trees, and plantings, as well as off-site improvements, all driveways and walkways, or any other improvement not a part of the home itself;

(2) Damage to real property which is not part of the home covered by the warranty and which is not included in the purchase price of the home;

(3) Any damage to the extent it is caused or made worse by any of the following:

(A) Negligence, improper maintenance, neglect or improper operation by anyone other than the builder or any employee, agent, or subcontractor of the builder;

(B) Failure by anyone other than the builder or any employee, agent, or subcontractor of the builder to comply with the warranty requirements of manufacturers of appliances, equipment, or fixtures;

(C) Failure by the owner to give written notice by registered or certified mail to the builder of any defect within the time set forth in Section 6. However, the provisions of this subdivision shall not be construed to change either the warranty periods enumerated in subsection (a) of this section or the notice requirements provided by Section 6;

(D) Any change of the grading of the ground by anyone other than the builder, or any employee, agent, or subcontractor of the builder;

(E) Any change, alteration, or addition made to the home by anyone after the initial occupancy by the owner, except any change, alteration, or addition performed by the builder, or any employee, agent, or subcontractor of the builder; or

(F) Dampness, condensation, or other damage due to the failure of the owner to maintain adequate ventilation or drainage;

(4) Any loss or damage which the owner has not taken timely action to minimize;

(5) Any defect in, or any defect caused by, materials or work supplied by anyone other than the builder, or any employee, agent, or subcontractor of the builder;

(6) Normal wear and tear or normal deterioration;

(7) Loss or damage which does not constitute a defect in the construction of the home by the builder, or any employee, agent, or subcontractor of the builder;

(8) Loss or damage resulting from war, accident, riot and civil commotion, water escape, falling objects, aircraft, vehicles, acts of God, lightning, windstorm, hail, flood, mudslide, earthquake, volcanic eruption, wind driven water, and changes in the level of the underground water table which are not reasonably foreseeable;

(9) Any damage caused by soil movement which is covered by other insurance;

(10) Insect damage;

(11) Any loss or damage which arises while the home is being used primarily for a nonresidential purpose;

(12) Any condition which does not result in actual physical damage to the home;

(13) Bodily injury or damage to personal property;

(14) Any cost of shelter, transportation, food, moving, storage, or other incidental expense related to relocation during repair;

(15) Any defect not reported in writing by registered or certified mail to the builder or insurance company, as appropriate, prior to the expiration of the period specified in subsection (a) of this section for such defect plus thirty days.

(16) Consequential damages;

(17) Any loss or damage to a home caused by soil conditions or soil movement if the home is constructed on land owned by the initial purchaser, and the builder obtains a written waiver from the initial purchaser for any loss or damage caused by soil conditions or soil movement; and

(18) Mold and mold damage.

(c) The provisions of subsection (a) establish minimum required warranties and shall not be waived by the owner or reduced by the builder, provided, the home is a single or multiple family dwelling to be occupied by an owner as the owner's home.

SECTION 6. Before undertaking any repair himself or instituting any action for breach of warranty, the owner shall give the builder written notice, by registered or certified mail, within three (3) months after knowledge of the defect, advising the builder of all defects and giving the builder a reasonable opportunity to comply with the provisions of this chapter. The builder shall give the owner written notice of the requirements of this chapter at the time of the closing.

SECTION 7. No action to enforce any warranty provided in this chapter shall be filed more than thirty (30) days after the expiration of the one (1) year period provided in Section 5.

SECTION 8. All or part of the builder's obligation under any warranty required in this chapter may be insured by the builder for the benefit of the purchaser through an insurance company authorized to transact business in this state.

SECTION 9. Any warranty imposed under the provisions of this chapter and any insurance benefit shall automatically transfer without charge, to a subsequent owner who

acquires title to the home. Any transfer of the home shall not extend the duration of any warranty or insurance coverage.

#### SECTION 10.

(a) If a builder violates this chapter by failing to perform as required by the warranties provided in this chapter, any affected owner shall have a cause of action against the builder for actual damages, including attorney fees and court costs, arising out of the violation. The damages with respect to a single defect shall not exceed the reasonable cost of repair or replacement necessary to cure the defect, and damages with respect to all defects in the home shall not exceed the original purchase price of the home.

(b) The parties may provide for the arbitration of any claim in dispute. Any arbitration shall comply with, and may be binding only to the extent provided in the Uniform Arbitration Act, compiled in title 29, chapter 5, part 3.

SECTION 11. This chapter provides the exclusive remedies and warranties as between builder and owner relative to home construction, and no other provisions of law relative to warranties and defects shall apply. Nothing herein shall be construed as affecting or limiting any warranty of title to land or improvements.

SECTION 12. This act shall take effect July 1, 2006, the public welfare requiring it.